88-1221

Supreme Court, U.S.
FILED
JAN 21 1989
JOSEPH F. SPANIOL, JR.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

CHARLES A. WEISMAN

Appellant

vs.

STATE OF MINNESOTA

Appellee

On Appeal From The Minnesota Court of Appeals

JURISDICTIONAL STATEMENT

Charles A. Weisman
1st Judicial District
11751 W. Riverhills Drive
Burnsville, Minnesota

Appellant – In Propria Persona

QUESTIONS PRESENTED

1. Whether the right to travel within a State is a right and a provision of the Federal Constitution.

2. Whether Minnesota laws requiring licensing of persons (driver's license), before being allowed to travel within the boundries of the State of Minnesota by way of automobile, contravenes the constitutional right of free travel under the Constitution of the United States.

3. Whether Minnesota automobile registration laws, which requires the payment of a privilege tax, contravenes the constitutional right of free travel under the Constitution of the United States.

PARTIES TO THE PROCEEDING

Appellant – Charles A. Weisman, proceeding In Propria Persona, Sui Juris.

Appelle – The State of Minnesota

Attorneys for Appelle:
Hubert H. Humphrey, III – Minnesota Attorney General
Jeffrey S. Bilcik – Special Assistant Attorney General
Frank La Grange – City Attorney, Minneapolis

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OPINIONS BELOW

The decision of the Court of Appeals of Minnesota was an "unpublished opinion." See Appendix A-1 to A-10.

The opinion and decision of the court of first instance (The Hennipin County District Court) is recorded in the trial transcript of the proceedings of the case. (See Appendix A-11 to A-14).

The order of the Supreme Court of Minnesota denying review of the case is annexed as Appendix A-17.

JURISDICTION

In affirming appellant's conviction, the Minnesota Court of Appeals, sustained the constitutionallity of statutes under Chapter 168, 169, and 171 of the Minnesota Statutes. The judgment of the Court of Appeals was entered on November 1, 1988, and is annexed as Appendix A-10.

A *PETITION FOR REVIEW OF DECISION OF COURT OF APPEALS* was filed in the Supreme Court of Minnesota on November 17, 1988. The Minnesota Supreme Court issued an order denying review filed December 16, 1988, and is annexed as Appendix A-17.

Having exhausted all possible remedies in the State of Minnesota, the Appellant had duly filed a *NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES* (Appendix A-15) in the Minnesota Court of Appeals on December 30, 1988, pursuant to S. Ct. R. 10.3.

This appeal is being docketed in this Court within 90 days from the denial of review below pursuant to S. Ct. R. 11.3. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257 (2), and pursuant to its appellate jurisdiction under ARTICLE III, SECTION 2 of the Constitution for the United States. The jurisdiction of this Court to review the judgment of the Minnesota Court of Appeals being sustained in *Ward v. Maryland,* 12 Wallace (79 U.S.) 418, 423-24 (1870).

CONSTITUTIONAL PROVISIONS INVOLVED

The fourth article of the *Articles of Confederation and Perpetual Union* of 1777, to wit:

> ARTICLE IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, * * *

The Constitution for the United States of America (1787) as a whole is also involved in this case. Being that the document secures and embraces the Organic Law that proceeded it, and by the consequences inevitably produced from its creation and adoption by the people of the United States.

STATUTORY PROVISIONS INVOLVED

Various statutes under Chapter 171 of Minnesota Statutes: DRIVER'S LICENSES AND DRIVER TRAINING SCHOOLS, and specifically sec. 171.02 (see Appendix A-2 to A-3). Also involved are various stautes under Chapter 168: MOTOR VEHICLES; REGISTRATION; TAXATION; SALES; DEALERS. And also Minnesota Statute 169.79 (see Appendix A-8).

STATEMENT OF THE CASE

This case was initiated on October 24, 1987, when the Appellant was traveling in his automobile across the 10th Avenue bridge (transversing the Mississippi River) in Minneapolis, Minnesota. Upon crossing the bridge, a police car being parked on said bridge turned on its red lights and stopped the Appellant. The Minneapolis police officer (Leland Kettelson) requested a driver's license from the Appellant. The Appellant informed the officer that he was not required to have a license to travel on the public ways. The officer then arrested the

Appellant and charged him with having no driver's license and for having no license or registration plates on his automobile.

Prior to the day of his arrest, that being on June 6, 1987, a Minnesota driver's license held by the Appellant did lawfully expire and Appellant has not availed himself of such a license from that time to the present. Thus, the Appellant was not a "licensee" under the Minnesota statutes referred to above nor is he subject to any board or commission.

At trial (on March 15, 1988) the Appellant claimed that he had a constitutional right to travel on the public roads in Minnesota in his *MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S POSITION.* In this memorandum the Appellant quoted the fourth article of the *Articles of Confederation* to show the nature and origin of this right, and the necessity of this right to create a Federal Union. The appellant argued that a driver's license and the payment of a tax via Minnesota automobile registration is a violation of this constitutional right to travel and repugnant to the Constitution.

Since the issues raised involved the constitutionality of the statutes, the trial judge postponed trial to notify the Attorney General of the State of Minnesota to agrue in opposition to Appellant's challenge as to the constitutionality of said statutes. The Attorney General's

Office submitted a "Plaintiff's Memorandum" of law and trial was reconvened April 7, 1988.

When trial resumed the Appellant had argued against the memorandum from the Attorney General's Office as being false, frivolous, irrelevant and off point. The memorandum had made the claim that the "motor vehicle tax" involved was a property tax which was the same view being asserted by the prosecution. The Appellant had shown that the tax is a license or privilege type of tax and is not constitutionally applicable to the Appellant because of his right to "free" access to the public roads. After this the prosecution continued to refer to the tax involved via Minnesota automobile registration as a property tax. It was recognized in the "Plaintiff's Memorandum" that the Appellant had a "Constitsutional right to travel."

The court then found the Appellant guilty of the two issues involved here, namely being guilty of having "no driver's license, Minnesota Statue 171.02; and failure to have registration or license plates, 169.79." (App. A-13).

The Appellant appealed to the Minnesota Court of Appeals and submitted a brief in defense of his position. The same issues were raised in this beief regarding the appellant's constitutional right to travel, and how the driver's license and the payment of a privilege tax infringes upon that right. This was supported by court case

decisions. In its decision the Court of Appeals was unable to refer to any relevant case that stated a person, such as the Appellant, was required to obtain a driver's license. It quoted some Federal cases dealing with the right to travel (App. A-3 & A-4) but drew no conclusion from them. Other cases it had referred to delt primarily with commercial activity which has no relevance to the Appellant.

In his brief Appellant further proved that the Minnesota "motor vehicle tax" was a license or privilege type of tax in quoting *Storaasli v. State of Minnesota,* 283 U.S. 57, 62 (1931), where this court held it has such. The Court of Appeals had tried to infer that the tax was not a privilege tax and stated "a privilege tax is levied on a business or occupation for which a license or franchise is required (App. A-10). The Court had also quoted *Storaasli* but had intentionally left out the words: "It is denominated a privilege tax" (App. A-9) from the Supreme Court's decision to infer the tax as being something else. Thus the Court of Appeals was intentionally committing reversable error on this matter. Oral arguements were not allowed.

The Court of Appeals had made reference to other cases in trying to apply the "motor vehicle tax" to the Appellant. Some of these cases delt only with registration of an automobile and the registration fees. The Appellant had made it clear at trial and at appeal in his

brief that the argument was not against automobile registration and associate fees, but rather it was against the license or privilege tax imposed. Other cases the Court referred to on this matter delt with commerce which is not involved in Appellant's case.

REASONS REQUIRING PLENARY CONSIDERATION

I. The right to travel in the State of Minnesota is a right and provision of the Federal Constitution.

This case presents the important question of whether the Constitution provides for the right of a citizen to freely travel through the territory of his own State. The *Articles of Confederation,* which created the Union between the States, provided in its fourth article, supra, the right of the people of each State to have "free ingress and regress to and from any other state." If a citizen is to have the right to freely travel to another State, he must also have the right to travel through the territory of his own State in order to get to the other State. This means a citizen is to have the right to travel in all parts of the Union as verified by this Court in the case of *Shapiro v. Thompson,* 394 U.S. 618, 629 (1968):

> This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of

our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. That proposition was early stated by Chief Justice Taney in the *Passenger Cases,* 7 How. 283, 492 (1849):

"For all the purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States." (See also *Crandall v. Nevada,* 6 Wall. 35, 48-49, 1867).

The Framers of our Union realized the necessity of each State in the Union in permiting free travel through its territory. If any one State were to prohibit or tax the travel within its boarders, that State would have no comity or intercourse with the other States, and thus it would have been impossible for a Union to exist between it and the other States. The people of all thirteen States agreed to this provision which became a part of the Constitution of the United States.

Minnesota became a member of the Union on May 11, 1858, whereupon it became subject to the terms and provisions of the Union, including the provision allowing all citizens the right to "pass and repass through every part of it without interruption."

While the predominant means of travel at the time the Union was formed were by horse or horse and car-

riage or on foot, the Framers of the Constitution had undoubtedly known that new means of transportation would be developed. Since the invention of the automobile the courts of the United States have universally recogonized the automobile not only as a lawful means of common travel, but one that has equal rights with other modes of travel using public ways:

> The law does not denounce motor carriages, as such, on public ways * * * they have an equal right with other vehicles in commom use to occupy the streets and roads. * * * It is improper to say that the driver of the horse has rights in the road superior to the driver of the automobile. Both have the right to use the easement. *Indiana Springs Co. v. Brown,* 165 Ind. 465, 468.

> Automotive vehicles are lawful means of conveyance and have equal rights upon the streets with horses and carriages. *Chicago Coach Co. v. City of Chicago,* 337 Ill. 200, 205.

> A pedestrian and an automobilist have equal rights in the use of a public highway * * *. *Fulton v. Chouteau County Farmers' Co.,* 98 Mont. 48, 51.

There is no distinction made by these authorities (and many others) in the mode of travel a citizen chooses to use on a public way (as Appellant had shown from the beginning at trial). Thus the Appellant has a right under the Federal Constitution to travel throughout this country in his automobile:

> The right to operate a motor vehicle [an automobile] upon the highways is not a mere

privilege. It is a right or liberty, the enjoyment of which is protected by the guarantees of the federal and state constitutions. *Adams v. City of Pocatello,* 91 Idaho 99 (1966).

In light of these facts it becomes evident that the Appellant has a constitutional right to travel in his automobile throughout the United States including through the territory of the State of Minnesota.

The lower courts and the prosecution in this case have for the most part avoided specifically addressing this issue and have distorted it or sidetracked it into other issues. The trial court and prosecution believed this right of travel pertained only to interstate travel, that is, the right to cross State boundry lines. The Court of Appeals avoided making any specific comment on this right. Thus, review of this case is merited since the State courts were reluctant to uphold and recognize this provision of the Constitution of the United States.

II. The Driver's License required under Minnesota Law is a prohibition on the Constitutional provision of free travel throughout the Union.

The Appellant has maintained that the driver's license under Minnesota law cannot be constitutionally applied to him. This is due to the fact that the Appellant already has a right to travel under the Constitution, and such a license would completely preclude him from exercising that right. A license, as a legal instrument,

carries with it certain legal implications and conditions that are inescapable and fundamental to its use, one of which is the power of its issuer to prohibit an act:

> The authority to license implies the power to prohibit, such being the meaning of the term. *City of Burlington v. Bumgardner,* 42 Iowa 673, 674

> A license means leave to do a thing which the licensor could prevent. *Western Electric Co. v. Pacent Reproducer Corp.,* 43 F.2d 116, 118

The laws of Minnesota, which were used against the Appellant, requiring him to have a driver's license, completely "prohibits" his ability to travel using his automobile within the boundries of Minnesota. As a license the driver's license is intended to "prevent" one from traveling via an automobile until he makes an application for said license, takes an examination, and pays a license fee, before being allowed the right of travel.

Another attribute of such a license is that it infers that a certain act is unlawful and that a license is needed to make the act lawful:

> A license is merely a permit or privilege to do what otherwise would be unlawful. *Payne v. Massey,* 145 Texas 237, 241.

> The purpose of a license is to make lawful what would be unlawful without it. *State v. Mpls-St. Paul Metro Airports Com'n,* 223 Minn. 175.

The statute (M.S. 171.02) requiring a citizen to obtain a Minnesota Driver's License is making the statement that it is "unlawful" to travel in the State of Minnesota with an automobile. This is constitutionally impossible since the Federal Constitution provides for right to travel within the Union, and automobiles have always been considered to be a lawful means of conveyance. State laws cannot make an act sanctioned by the Constitution of the United States an unlawful act.

It became evident that the lower courts did not recognize or understand the legal nature of a license (which includes more than what has been stated here). Therefore, the question of the validity the Minnesota Statute that would apply a "driver's license" to the Appellant is of substantial constitutional dimension and should be granted plenary review.

III. The Minnesota Motor Vehicle Registration laws require the payment of a privilege tax which places a penalty and burden on the right to travel.

The appellant was charged and arrested for having no automobile registration (M.S. 169.79). The Appellant has asserted that he is not constitutionally required to take out automobile registration due to a "motor vehicle tax" that is required before the registration can be had. This tax is levied and made a requirement under Chapter 168 of the Minnesota Statutes: MOTOR

VEHICLES; REGISTRATION; TAXATION; SALES; DEALERS. The nature and character of this tax was decided upon by this Court as follows:

> We think it plain that the levey is an excise for the privilege of using the highway. It is denominated a privilege tax. The car cannot use the highways unless it is paid. *Storaasli v. Minnesota,* 283 U.S. 57, 62 (1931).

The tax was first imposed in 1921, under a constitutional amendment authorizing a property tax. While this tax, by the nature it is levied, is a privilege tax, it has been falsely interpreted by the State as a property tax.

Chapter 168 also provides for the payment of a registration fee in conjunction with registration. The Appellant has asserted at trial and during appeal that he was not arguing against automobile registration per se or the registration fee, but rather against the privilege tax as made a condition of the registration. Registration has long ago been held to be a valid State measure for regulation and safe operation of automobiles in the streets. *People v. Schneider,* 139 Mich. 673, 676 (1905). The State can only apply such reasonable fees necessay to cover the administrating cost of the registration. *Kane v. New Jersey,* 242 U.S. 160, 167 (1916).

The privilege tax (motor vehicle tax) levied under Minnesota law is a separate charge from the registration fee, it has nothing to do with the cost of implementing

the registration of automobiles, and it is wholly a revenue measure and not a regulatory measure.

The privilege tax places a condition and penalty on the constitutional right of travel, a condition that has nothing to do with public safety or regulation. The tax penalizes the abilty of a citizen to travel by use of an automobile, as stated in *Storaasli,* supra: "The car cannot use the highways unless it is paid." A State cannot tax a measure or provision of the Federal Constitution such as the right to travel through a State:

> If the right of passing through a State by a citizen of the United States is one guaranteed to him by the Constitution, it must be as sacred from State taxation as the right derived by the importer from the payment of duties to sell the goods on which the duties were paid. *Crandall v. Nevada,* 6 Wall. 35, 47 (1867).

The Framers of the Union had clearly expressed that this ability and right of travel though the Union was to be "free." If the State can tax the exercise of this right one dollar it can tax it one thousand dollars, and thereby may totally prevent or seriously burden this mode of travel. *Crandall v. Nevada,* supra, 46.

The Minnesota Court of Appeals, in its decision to uphold the validity of Minnesota's automobile registration and privilege tax against the Appellant, rest its decision on cases that involve commerce and commercial law: *Continental Baking Co. v. Wooding* (App. A-5

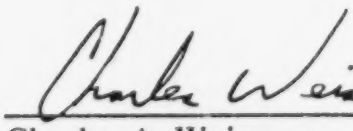
n.1) and *Carley and Hamilton v. Snook* (App. A-8). The Court of Appeals had also committed reversable error by inferring that the "motor vehicle tax" is not a privilege tax. The court had completely avoided giving any constitutional reasoning as to why or how such a tax could be levied against the Appellant.

CONCLUSION

The Minnesota Statutes in question prohibit, impinge and penalize the right of free travel within the State. Thus, the State of Minnesota cannot license and tax the right to travel within its boarders, as the exercise of such power is repugnant to the admitted constitutional right of citizens to freely travel through all parts of the Union.

For these reasons, the questions presented are so substantial as to require plenary consideration with briefs on the merits for their resolution.

Respectfully Submitted,



Charles A. Weisman
1st Judicial District
11751 W. Riverhills Drive
Burnsville, Minnesota
(612) 890-0202

Appellant,
In Propria Persona - Sui Juris

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STATE OF MINNESOTA
IN COURT OF APPEALS

Case No: C0-88-811
Opinion of the Court – November 1, 1988

DECISION

We find the appellant did not meet his burden of proving the challenged motor vehicle and driver licensing statutes unconstitutional beyond a reasonable doubt. The trial court did not err by holding appellant must have a valid driver's license, must display current license plates, and finding that appellant drove unlawfully in excess of speed regulations.

The Minnesota Supreme Court has defined the role of courts addressing the constitutionality of legislative enactments:

> In cases that challenge the constitutionality of a statute, the law is presumed to be constitutional. Head v. Special School District No. 1, 288 Minn. 496, 506, 182 N.W.2d 887, 894 (1970), certiorari denied sub nom., Minneapolis Federation of Teachers Local 59 v. Spannaus, 404 U.S. 886 (1971). An act will not be found unconstitutional unless its invalidity is clear or it is shown beyond a reasonable doubt to violate the constitution. E.g., Grobe v. Oak Center Creamery Co., 262 Minn. 60, 61, 113 N.W.2d 458, 459 (1962); State v. Lanesboro Produce & Hatchery Co., 221 Minn. 246, 255, 21 N.W.2d 792, 796 (1946). We declare a law unconstitutional only if absolutely necessary, and then only with great caution. E.g., City of Pipestone v. Madsen, 287 Minn. 357, 363, 178 N.W.2d 594, 598 (1970); Minneapolis Gas Co. v.

Zimmerman, 253 Minn. 164, 173, 91 N.W.2d 642, 650 (1958); State v. Lanesboro Produce & Hatchery Co., 221 Minn. 255, 21 N.W.2d 796.

State on Behalf of Forslund v. Brouson, 305 N.W.2d 748, 751 (Minn. 1981) (quoting City of Richfield v. Local No. 1215, 276 N.W.2d 42, 45 (Minn. 1979)).

The burden of proof on the question of constitutionality is on the party seeking to set the law aside. Minneapolis Fed'n of Teachers Local 59 v. Obermeyer, 275 Minn. 347, 147 N.W.2d 358 (1966). The court should not declare a legislative act unconstitutional unless it is satisfied, after careful consideration, that the act conflicts with some provision of the state or federal constitution. See Minneapolis Gas Co. v. Zimmerman, 253 Minn. 164, 91 N.W.2d 642 (1958).

An appellate court is not bound to a trial court's determination of a question of law. Frost-Benco Elec. Ass'n v. Minnesota Public Utilities Com'n, 358 N.W.2d 639 (Minn. 1984). Where the trial court error claimed is one that affects the substantial justice of the case or the legal right of a party, it is a question of law. Naxtera v. Wathan 159 N.W.2d 513 (Iowa 1968).

I.

Driver Licensing

Appellant challenges his conviction for violating Minn. Stat. sec. 171.02 (1986) which provides in pertinent part:

> Subdivision 1. No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon any street or highway in this state unless such person has a license valid under the provisions of this chapter for the type or class of vehicle being driven.

Appellant argues requiring a driver's license: (1) encroaches on his constitutional right to travel; (2) makes his "natural liberty of locomotion subordinate to the license"; (3) implies that the right to travel is a privilege to be licensed by the state, rather than a fundamental constitutional right; and (4) serves no legitimate or functional purpose in securing public safety since the courts do not find the automobile a dangerous instrument.

The United States Supreme Court has consistently recognized "the right of a United States citizen to travel from one state to another and to take up residence in the State of his choice" as a right protected by the federal constitution. Jones v. Helms, 452 U.S. 412, 418 (1981). The textual source of this right has been the subject of debate. See Shapiro v. Thompson, 394 U.S. 618, 629-31 (1969); United States v. Guest, 383 U.S. 745, 757-59 (1966). "The right to travel has been described as a privilege of national citizenship * * * protected by the privileges and immunities clause of the Fourteenth Amendment against state interference." Jones, 452 U.S. at 418; Edwards v. California, 314 U.S. 160 (1941). It has also been described as "an aspect of liberty that is

protected by the Due Process Clause of the Fifth and Fourteenth Amendments." Jones, 452 U.S. at 418-19 & n.13 (citing Williams v. Fears, 179 U.S. 270 (1900)). "Whatever its source, a State may neither tax nor penalize a citizen for exercising his right to leave one State and enter another." Jones, 452 U.S. at 419.

The right to travel is basically a right to travel unrestricted by unreasonable government interference or regulation. Tetalman v. Holiday Inn, 500 F. Supp. 217, 218 (N.D. Ga 1980). The test of constitutionality of a statute which infringes upon the right to travel is not actual deterrence but rather the presence of a penalty on its exercise. Strong v. Collatos, 450 F. Supp. 1356, 1360 (D. Mass. 1987), aff'd 593 F.2d 420, 422 (1st Cir. 1979). (requirement which operates to impose some loss, hardship or disadvantage on exercise of right to travel may be said to "penalize" that right and plaintiff need not show deterrent effect or intent). A compelling state interest is necessary to impinge the right to travel, and legislation which serves to penalize the right to interstate travel is subject to strict scrutiny. Memorial Hospital v. Maricopa County, 415 U.S. 250, 258 (1974); Shapiro, 394 U.S. 618 (1969). A rational basis test applies where the right to travel has not been penalized. Beil v. City of Akron, 660 F.2d 166 (6th Cir. 1981).

Appellant argues the right to travel by a citizen on the public roads is a fundamental and constitutional right and includes the use of an automobile as a means of con-

veyance. The thrust of his argument is that certain motor vehicle statutes are unconstitutional because they infringe upon his right to travel. Although on appeal appellant argues that various motor vehicle statutes are unconstitutional as applied to him, his equal protection and due process challenges are procedurally flawed. Appellant did not raise these latter arguments at trial. This court will limit itself to a consideration of only those issues that the record shows were presented and considered by the trial court in deciding the matter before it. Schatz v. Davis, 354 N.W.2d 522, 524 (Minn. Ct. App. 1984). Thus, this court will not consider appellant's equal protection challenges.[1]

1 Although we not consider appellant's equal protection and due process challenges, we note those challenges are contrary to existing law.

Appellant's equal protection argument is that registration of motor vehicles creates a class distinction "between modes of conveyance used in travel by taxing one mode of travel and not others," i.e., bicycles, horse and carriage. Appellant's argument is not supported by case law. The United States Supreme Court has held that 'equal protection' with respect to classification for tax purposes, does not require identy of treatment, but only that classification rests on real and not feigned differences, that the distinction have some relevance to purpose for which classification is made, and that the different treatments be not so disparate, relative to difference in classification, as to be wholly arbitrary. Walters v. City of St. Louis, Mo., 347 U.S. 231, 237 (1954). The legislature of each state may, in the exercise of the police power, enact reasonable regulations requiring the licensing or registration of motor vehicles * * *. Continental Baking Co. v. Woodring, 286 U.S. 352 (1932).

Concerning the challenge to the constitutionality of the statute, appellant confuses the concept of right to travel with the privilege of operating a motor vehicle upon the public highways. The Minnesota Supreme Court said in Anderson v. Commissioner of Highways, 126 N.W.2d 778, 784 (Minn. 1964): [2]

> Permission to operate a motor vehicle upon the public highways is not embraced within the term "civil rights" and is in the nature of a license or privilege. While the privilege is a valuable one, and may not be unreasonably or arbitrarily taken away, its enjoyment depends upon compliance with conditions prescribed by law and is always subject to such regulation and control as public authority may see fit to impose under the police power in the interest of public safety and welfare.

2 (Footnote 1 continued from page B-5) "The state is not limited to the imposing of license or registration fees under the police power alone; it may impose such a fee or tax for revenue purposes * * * [and] for the purpose of constructing and maintaining the public highways." 7A Am. Jur. 2d, Automobiles and Highway Traffic 55 (1980) (citations omitted).
Appellant's due process argument is that the towing and impounding of his motor vehicle without his consent violates his his right of property. This argument is also contrary to existing case law. "A municipality may by ordinance validly authorize its officers summarily, and without judicial process, to impound automobiles left unattended in the streets in violation of parking regulations, and may subject the owners to a reasonable fee commensurate with the cost of enforcement and removal * * * such ordinance does not violate the constitutional right of a vehicle owner to due proces of law." 7a Am. Jur. 2d, Automobiles and Highway Traffic sec. 284 (1980) (citations omitted).

Anderson, supra. See also 7A Am. Jur. 2d, Automobiles and Highway Traffic sec. 97 (1980). Appellant in his own brief admits "this is not to conclude or infer that such rights, as secured by the constitutions, are absolute rights and not subject to certain reasonable regulations that would promote public welfare and the free and equal exercise of such rights by citizens. To the contrary, this is one of the duties of the state legislatures."

The challenged statutes do not infringe upon appellant's right to travel, but merely regulate the use of motor vehicles upon public highways if the interest of public safety. "Statutes have been commonly enacted in the various states requiring drivers or operators of motor vehicles to obtain a license as a condition of the right to drive such vehicles upon the public highways." 7A Am. Jur. 2d, Automobiles and Highway Traffic 96 (1980) (citations omitted). "The fundamental purpose underlying the enactment of such statutes is to insure a minimum of competence and skill on the part of drivers of motor vehicles generally, so as to protect third persons who might otherwise be injured or else have their property damaged by the negligent or reckless operation of vehicles on the public highways." Id. Appellant fails to meet his burden of proving the statute unconstitutional beyond a reasonable doubt.

II.

Vehicle Registration and License Plate Display

Appellant challenges his conviction for violating Minn. Stat. 169.79 (1986), failure to display license plates, which provides in pertinent part:

> No person shall operate, drive or park a motor vehicle on any highway unless the vehicle is registered in accordance with the laws of this state and has the number plates for the current year only, as assigned to it by the commissioner of public safety, conspicuously displayed thereon in a manner that the view of any plate is not obstructed.

Appellant argues: (1) the registration of an automobile imposes a privilege tax; (2) the state cannot make a privilege of something that is already a right; (3) the registration fee is a revenue measure and is not incident to the power to regulate; (4) a privilege or license tax can only apply to commercial activity; (5) the tax violates the principle that roads are to be free for all; (6) the tax as applied taxes appellant's constitutional right to travel on the public roads; and (7) the tax creates a distinction in rights between travelers using automobiles and travelers using other modes of conveyance.

Generally, statutes providing for the licensing or registration of motor vehicles and the levying of a concomitant tax or fee have been held to constitute valid enactments not in violation of any provision of state or federal constitutions. Carley & Hamilton v. Snook, 281

U.S. 66 (1930). State legislatures may, in the exercise of their police and revenue powers enact reasonable regulations requiring the licensing or registration of motor vehicles, the prime purpose of which being to supervise vehicles, their movement and control, and to establish their identity in relation to the public and to any resultant damage or injury they may occasion; in this way proper supervisory authority may be invoked when it becomes necessary to verify the owner of the vehicle. 7A Am. Jur. 2d Automobiles and Highway Traffic sec. 51 (1980) (citations omitted). Here, the legislature could have concluded that license plates are the best method of identification, both of the vehicle and of the owner or operator, for in case of accident, the name of the owner can be readily ascertained from the license number, and through him the name of the operator.

Regarding the license fee or tax, the U.S. Supreme Court has decided the character of the tax:

> We think it plain that the levy [license tax] is an excise for the privilege of using the highways * * * The car cannot use the highways unless it is paid. The statute contains the usual provisions for registration, issuance and display of number plates, etc.

Storaasli v. State of Minnesota, 283 U.S. 57 (1931). Appellant's arguments against the tax again confuse the right to travel with the privilege of operating a motor vehicle upon the public highways. Further, appellant misconstrues the license tax as a "privilege tax" whereas

the U.S. Supreme Court characterized it as an "excise tax." A privilege tax is levied on a business or occupation for which a license or franchise is required. Black's Law Dictionary 1078 (5th ed. 1979). An excise tax is a tax imposed on the performance of an act or enjoyment of a privilege. Black's Law Dictionary 506 (5th ed. 1979). Appellant's arguments against vehicle registration are defeated by longstanding case law. The trial court did not err by concluding that, as a matter of law, appellant failed to meet his burden.

In each constitutional challenge, appellant fails to carry his burden of proof that the statutes are unconstitutional beyond a reasonable doubt. Every presumption is in favor of the constitutionality of a statute regularly enacted through the legislative process. Appellant admits that the right to travel is not absolute, and is subject to reasonable regulation. The trial court properly found that Minnesota's regulations are reasonable, pertinent to the items they seek to regulate, not in violation of due process rights, and appellant's constitutional challenge failed.

The trial court did not err by concluding that the challenged Minnesota motor vehicle and driver licensing statutes are constitutional, and by finding appellant violated those statutes.

Affirmed. /s/ Judge R. A. Randall,
10-25-88

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | 4th JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

TRANSCRIPT OF PROCEEDINGS

VOLUME II – April 7, 1988

vs.

Charles Weisman,
Defendant.

District Court Nos.
1710097, 1710098, 170099

OPINIONS OF THE COURT

THE COURT: Well, I've read your brief, Mr. Weisman, and clearly under 171 there is a definition of motor vehicle and the definition of motor vehicle is broad enough to include the type of vehicle you were driving, and that that would require that you have a valid operator's license.

You know, throughout your brief, I would respectfully suggest to you that you beg the question in order to reach your objective, that you invariably indicate that the State's only interest in power is to regulate commercial activity. I do not think the case law supports that nor does that interpretation of the statute follow from what you have cited. That applies, it appears that the statute does in fact refer to motor vehicles, including private

passenger motor vehicles of the type you were operating at the time you were charged with the offense that is presently before the Court.

Similarly, you characterize the power of the State's ability to tax as reserved only to commercial activity. I think that's a false premise. They have a right to raise revenue. You and I may personally disagree with the nature and extent of the revenue and we might be offended by the laws enacted by the legislature that perhaps tax us more than we'd like to be, but it's a valid exercise of government power, and the appropriate way to address that is through legislative activity, that notwithstanding the fact that the Court might personally sympathize with you, that's neither here nor there, the Court cannot impose its personal evaluation of the laws upon the citizens of the State. My obligation as a Judge is to enforce the law as enacted.

I have no reservations about the constitutionality of the ability of the State to enact legislation taxing private motor vehicles through the form of registration, * * *

I wanted to afford you a reasonable opportunity to present your claims. I feel I have done so. Even though your brief is technically untimely, I took the time to read it. I advise you, Mr. Weisman, that your challenge as to the constitutionality is rejected. This Court finds you guilty of each one of the offenses that you are charged

with, namely, the failure on the date and at the time indicated to have a license in possession, that you were speeding and that you had no registration, that you have failed to prove the unconstitutionality and the State has proved your guilt beyond a reasonable doubt. * * *

THE COURT: The Court's decision has not been altered by the arguments of counsel. I find the defendant, Charles A. Weisman, guilty of each of the following charges:

No driver's license, Minnesota Statute 171.02; failure to have registration or license plates, 169.79, and speeding, 169.16. Anything you wish to say before I impose sentence, Mr. Weisman? This would be with respect to the sentence.

THE DEFENDANT: Yes. I just want to say that a notice of appeal is forthcoming and that the Court should not carry out any sentence until the appeal is determined.

THE COURT: I'll be happy to stay the sentence to afford you an opportunity to appeal.

THE DEFENDANT: Very well.

THE COURT: My attitude is not to coerce you into accepting the judgment of this Court. Notwithstanding the fact that I feel your arguments are unmeritorious, I

have no reservation about affording you an opportunity to review this Court's findings and nor am I out to punish you for exercising your constitutional rights. I actually applaud your interest in trying to challenge the laws of the State of Minnesota. That's a matter that's reserved to our citizens, it's an inherent part of our democracy and I think it's healthy, nevertheless, I think your arguments, like a lot of arguments of laymen, although well intended are a misapplication of the law, a misunderstanding of the law and the cases.

In any event, it is the sentence of this Court as follows:

With respect to the conviction of no driver's license, I impose a fine of $40 or four days.

With respect to the conviction of speeding, the Court imposes a fine of $40 or four days.

And with respect to the failure to have registration plates, $20 or two days.

That the sentences imposed by this Court are stayed for a period of thirty days to afford Mr. Weisman an opportunity to perfect an appeal. Absent a stay by law, the fines must be paid within the 30-day period or you report to the workhouse.

(WHEREUPON, the proceedings duly ended.)

STATE OF MINNESOTA
IN COURT OF APPEALS

Charles A. Weisman, *Appellant*	)	
vs.	)	**No. C0-88-811**
State of Minnesota, *Appelle*	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Charles A. Weisman, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Minnesota Court of Appeals affirming the judgment of conviction of no driver's license and no automobile registration, entered herein on November 1, 1988. Petition for review to Supreme Court denied Dec. 16, 1988.

This appeal is taken pursuant to 28 USC, sec. 1257(2).

Dated this 29th day of December, 1988.

Charles Weisman

Charles A. Weisman
Appellant – In Propria Persona
1st Judicial District
11751 W. Riverhills Drive
Burnsville, Minnesota
(612) 890-0202

AFFIDAVIT OF SERVICE

I, Charles A. Weisman, of the City of Burnsville, County of Dakota, State of Minnesota, hereby affirm that on the 29th day of December,1988, served to all parties required to be served, a copy of the annexed *NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES,* via the U.S. mail, pursuant to Rule 28 of the Rules of the Supreme Court of the United States. The parties being served as follows:

FRANK La GRANGE, Attorney for the City of Minneapolis, A1700 Government Center, 300 South 6th Street, Minneapolis, Minnesota 55487

JEFFREY S. BILCIK, Special Assistant Attorney General of Minnesota, 200 Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155

Charles Weisman

Affiant – Charles A. Weisman

Subscribed and affirmed to before me
this 29th day of December, 1988

Mary A Anderson

Notory Public – Dakota County, Minnesota

STATE OF MINNESOTA
IN SUPREME COURT
CO-88-811

State of Minnesota,

Respondent,

vs.

Charles A. Weisman,

Appellant.

ORDER

Based upon all the files, records and proceedings herein, IT IS HEREBY ORDERED that the petition of Charles A. Weisman for further review be, and the same is, denied.

Dated: 12-16-88

BY THE COURT:

/s/ Douglas K. Amdahl
Chief Justice